

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated March 4, 2010 and to recover the filing fee for this proceeding.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This tenancy started in 1994. Rent is \$740.00 per month payable in advance on the 1<sup>st</sup> day of each month. On March 5, 2010, the Landlord served the Tenant by registered mail with a One Month Notice to End Tenancy for Cause dated March 4, 2010. The ground stated on the Notice was the Tenant was repeatedly late paying rent.

The Landlord provided copies of 3 of the Tenant's cheques dated July 2 (or 7), 2009, October 2, 2009 and December 3, 2009. The Landlord said he gave all of the tenants of the rental property a letter dated August 2, 2009 advising them that rent was due no later than the 1<sup>st</sup> of each month and that any late payments would be considered a breach of the tenancy agreement. The Landlord also said that there is a mail slot in the lobby of the rental property for tenants to drop off their rent payments.

The Tenant claimed that it was his understanding prior to August 2009 that he should wait for the Landlord to collect his rent payment in person. The Tenant said that following August 2009, he still waited to pay rent until such time as he could give it to the Landlord in person because he was concerned about getting a receipt.

### Analysis

It is clear from the Landlord's evidence that there were other tenants in the rental property who, prior to August 2009 were also not putting their rent payments into the mail slot by the 1<sup>st</sup> of each month. Consequently, I conclude that prior to August 2, 2009 the Tenant did not have reasonable notice that the Landlord would not condone late payments any further and that a failure to pay rent in the method required by the Landlord would result in a breach of the tenancy agreement. However, following August 2, 2009, I find that it should have been clear to the Tenant that if he did not leave his rent payment in the mail slot by the 1<sup>st</sup> of each month he would be deemed to have not

paid rent on time and be in breach of his tenancy agreement. As a result, I find that the Tenant was late paying rent for October and December 2009.

With respect to the Tenant's rent payment dated July 2<sup>nd</sup> or 7<sup>th</sup>, 2009, there is no evidence that the Landlord issued the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent. Given that the Landlord issued a clarification letter to all tenants the following month, I find on a balance of probabilities that the Landlord waived reliance on timely payment for July 2009 and as a result, I find that this payment cannot be considered a late payment under this section of the Act.

RTB Policy Guideline #38 (Repeated Late Payment of Rent) says that "three late payments are the minimum number sufficient to justify a notice under these provisions." As I have found that there is evidence of only 2 late payments, I find that there are no grounds for issuing the One Month Notice to End Tenancy dated March 4, 2010 and it is cancelled. However, I also find that this is not an appropriate case to award reimbursement of the application filing fee and that part of the Tenant's application is dismissed without leave to reapply.

### Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated March 4, 2010 is allowed and the tenancy will continue. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 26, 2010.

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Dispute Resolution Officer